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No. 75-170

In the Supreme Court of the United States

OCTOBER TERM, 1975

EDDIE THOMPSON, JR., PETITIONER

v.

CITY OF COVINGTON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner, Executive Director of the Covington Housing Development Corporation, brought this action on behalf of himself and that Corporation under 42 U.S.C. 1981 and 1983 against the City of Covington, Kentucky, several city officials, and two former employees of the United States Department of Housing and Urban Development (HUD). The complaint alleged that the Corporation had contracted with the City of Covington for the development of a housing complex pursuant to the Demonstration Cities and Metropolitan Development Act of 1966, 80 Stat. 1255, as amended, 42 U.S.C. 3301 *et seq.*; that because petitioner is black, city officials deliberately misrepresented certain facts to HUD in a successful attempt to prevent further funding of the project; and that the resulting publicity damaged his

reputation (Pet. 13-14). The complaint sought damages to the corporation or renewed funding for the project, and personal damages to petitioner (Pet. 19).

On December 18, 1973, the district court dismissed the complaint as to the City of Covington on the ground that a municipality is not a "person" within the meaning of the Civil Rights Act, 42 U.S.C. 1981 *et seq.* (Pet. 9-10). On June 27, 1974, the district court dismissed the complaint against the federal defendants on grounds of sovereign immunity and failure to exhaust administrative remedies (Pet. 12-17). On September 11, 1974, the district court dismissed the complaint as to the remaining individual defendants on the ground that petitioner lacked authority to sue on behalf of the corporation (Pet. 18-25).

The court of appeals affirmed (Pet. 27-28) in an opinion on which we rely (*id.* at 28):

> The district court correctly held that the individual plaintiff Thompson was not authorized to initiate or prosecute this action on behalf of his corporate employer. The record discloses no direction to sue or consent by the board of directors of HDC to this suit on behalf of the corporation by Thompson.
>
> In the complaint Thompson also sought relief for violation of his civil rights. He may not recover personally for wrongs allegedly suffered by the corporation which he directed. He and the corporation are separate beings in the eyes of the law. We have carefully searched the record for evidence that the civil rights of the plaintiff Thompson have been infringed by any of the defendants-appellees and have found none. The district court had no jurisdiction over claims of slander by the defendants or injury to Thompson's reputation. It could only consider infringement of rights protected by the United States Constitution or the Civil Rights Act under which this action was brought, 42 U.S.C. §§1981 and 1983. Our review of the record leads to the conclusion that no showing of such infringement was made, and that the defendants were entitled to judgment in their favor as a matter of law. Under these circumstances summary judgment was properly granted.

In addition, we note that the claim against the federal respondents (the two HUD employees) for renewed funding of the housing project is without merit in any event.[1] Those employees had no ability or authority to provide funding to the Covington Housing Development Corporation. See *Ceballos* v. *Shaughnessy*, 352 U.S. 599, 603. If the action is therefore treated as one against the United States (*Larson* v. *Domestic and Foreign Commerce Corp.*, 337 U.S. 682), the relief sought would require affirmative government action or would deplete public funds. But since the complaint did not allege that the HUD employees had acted unconstitutionally or exceeded their authority, the suit is therefore barred by sovereign immunity. *Larson* v. *Domestic and Foreign Commerce Corp., supra; Land* v. *Dollar*, 330 U.S. 731.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1975.

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[1]The two HUD employees, Hobart Wooten and Roger Carlton, were HUD's area representatives in the Louisville, Kentucky area. Wooten is now deceased (Pet. 14).

[2]Moreover, petitioner did not allege that he attempted to comply with "administrative remedies validly established by regulation * * *" (*National Lawyers Guild* v. *Brownell*, 225 F.2d 552, 557 (C.A.D.C.), certiorari denied, 351 U.S. 927; see 24 C.F.R. Parts 1 and 2), or that exhaustion of such remedies would have been futile. See *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41.